

Governance transformed into Corporate Social Responsibility (CSR): New governance innovations in the Canadian oil sands



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ABSTRACT

In the contested space of energy production in Canada, tension and a series of disputes over land and rights have arisen between the state, industry and local Aboriginal communities. Canadian governments have long exploited the bountiful natural resources of the land, while at the same time attempting to reconcile a difficult relationship with its Aboriginal communities. This case study reveals how the government has yielded responsibility to industry to resolve the many governance challenges of Canada's extractive hot zone. Through substantial delegation of governance duties to industry, the Canadian Government has placed large parts of its regulatory toolbox in the hands of multinational Corporate Social Responsibility (CSR) departments, and hence turned social and environmental planning and programming into corporate stakeholder management. This article sets out to explain these dramatic changes in governance power play and practice by examining the case of the extractive hot zone in Alberta, according to three distinct but interlinked trajectories in governance and CSR scholarship, namely the change from "government" to "governance", the emergence of a claimed post-political condition and the evolution of CSR practices towards stakeholder management.

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1. Introduction: Governance transformed into Corporate Social Responsibility (CSR)

In both the management literature and other areas, the growing body of research into Corporate Social Responsibility (CSR) indicates a field that has become rather polarized between proponents and opponents of a concept that over the past 20 years has been transformed from an irrelevant and often frowned-upon idea to one of the most orthodox and widely accepted concepts in the business world (Lee, 2008). As always, orthodoxy should be treated with caution, and by exploring case studies researchers can elaborate on and scrutinize the role of CSR and its implications.

For decades, encounters between global enterprises and local communities have been represented in geographical terms, and this article is no exception. The case study here of the Norwegian oil company Statoil and its ventures in the extractive hot zone of Canada provides insights into the workings of social, material and historical realities, challenging the image of CSR and its wider implications for societal governance.

The global energy market in general and the extractive hot zones more specifically are fertile ground for governance innovations; hence, they are excellent sites for studying emerging

governance practices. The activities of the extractive industry have had a great impact on the social, cultural and environmental realities in these zones (Gamu et al., 2015; LeClerc and Keeling, 2015; Veltmeyer and Bowles, 2014; Virah-Sawmy, 2015). Although there have been immense benefits for Canadian society, the burden shouldered by local ecosystems and Aboriginal communities is substantial, which adds up to a prolonged historical conflict between the Crown and its Aboriginal citizens over rights and entitlements (Cairns, 2000; Veltmeyer and Bowles, 2014). The reciprocal arrangement between industry and government on the one hand and local communities on the other has been observed to be skewed, with insufficient contribution to local development and fulfilment of Aboriginal rights and entitlements (Dembicki, 2012; Dow, 2012; Foster, 2008; Kelly et al., 2010).

Historically, the governance structure of Canada's extractive hot zones has been dominated by two groups of actors, namely governments at all levels and industry (Hoberg and Phillips, 2011). Huge efforts have been invested by these two sectors in developing a previously uneconomic energy commodity (bitumen) into a highly profitable enterprise, resulting in a thriving industrial venture (Sherval, 2015). However, this has not come without cost; bitumen extraction has reinforced past grievances among local Aboriginal communities, which have once again being deprived of their hard-earned access to traditional territories (Black et al., 2014; Huseman and Short, 2012; Jamasmie, 2014).

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To cope with these potentially destabilizing conditions, the Crown has facilitated the emergence of flexible governance innovations, comprised of three tangible measures, namely consultation, environmental impact assessments (EIAs) and impact and benefit agreements (IBAs) (Griffin, 2012; Harvey and Bice, 2014; Lemos and Agrawal, 2006; Reich, 2008; Solomon et al., 2008). These measures are based on the following objectives. All concerned parties (stakeholders) are to be (1) *consulted* and should make valuable contributions to governance processes; (2) *invited to participate in assessments* of planned interventions; and (3) *expected to reach agreements* based on certain minimum levels of consensus, so-called positive-sum games or win–win solutions (Jacobsson and Garsten, 2012). Only through governance structures based on pragmatic “what works” criteria—the discourse goes—can proper management of the extractive hot zones be exercised (Jones, 2008).

Accordingly, industry has been delegated extensive responsibilities for the use of governance instruments. Consequently, by encouraging companies to comply with international CSR standards, and by facilitating “beyond compliance activities”, the Alberta government has put private interests in the driver’s seat of the governance framework of the extractive hot zone.

To understand how these governance innovations emerged, and what their impact and consequences have been, we must examine recent developments in three different but related strands of thought in governance and CSR scholarship. The first relates to the conventional shift from government to governance, a development characterized by a move from hierarchical, representational government by institutions under majority rule, to more networked, egalitarian stakeholder relations based on alleged consensus (see for example Bingham et al., 2005; Braithwaite and Levi, 2003; Jessop, 1997; Jones, 1998; Rhodes, 1997, 2007). The second development relates to the first, but goes further by identifying a radically interpreted, particular post-political condition, namely the emergence of a managerial, elitist space emptied of politics where decisions are based on pragmatic “what works” criteria (see for example Agamben et al., 2009; Brown, 2005; Crouch, 2000; Mouffe, 1999, 2005; Swyngedouw, 2005, 2011; Žižek, 1999). The third feature is the incremental evolution of CSR towards stakeholder management. This change in corporate practices can be viewed as a response to changing governing preferences, together with an increased maturity in CSR implementation, primarily among multinational companies, where traditional philanthropic, standardized and image-based CSR has been replaced by an allegedly collaborative, performance-driven and integrated practice (Brammer et al., 2012; Dentchev et al., 2015; Porter and Kramer, 2006; Scherer et al., 2014; Solomon et al., 2008; Visser, 2013). This is in line with what scholars have identified as a more “inclusive business model” (Virah-Sawmy, 2015).

By following Statoil’s¹ journey into the vast prairies of Alberta, I show how companies have become an integral part of the new governance structure of Canada through their pragmatic quest for a social licence to operate. Multinational companies have encountered a highly politicized space in the extractive hot zone, and from a mix of formal consultations, corporate self-assessments and bilateral negotiations, we see the emergence of hybrid

governance structures, and more specifically the emergence of *governance as corporate stakeholder management*, in which industry plays the leading role.

This article is based on data collection and extensive fieldwork conducted from 2014 to 2015 in the extractive hot zone of Alberta, in a very challenging research environment where information is difficult to access, and vital parts of the governance practice are “out of reach” to outsiders (Jenkins et al., 2015). This particular case evolved from my gaining access to some vital key informants in an operating company (Statoil), a multi-stakeholder institution (CEMA) and some key local communities in the study area of interest: from Fort McKay in the north to Cold Lake in the east, and from Métis Crossing in the west to Calgary in the south. Interviews were conducted with Aboriginal community leaders, elders and representatives, government officials, consultants, lawyers and CSR officers and managers.² Fortunately, two Aboriginal communities provided access to important traditional land use studies. Additionally, countless pages of EIAs, manuals, guiding principles, strategies and Supreme Court decisions on Aboriginal rights and title were analysed. This illustrative case of Statoil in Alberta could have been conducted with other companies and stakeholders elsewhere in similar contexts, and serves here to shed light on the pragmatic adaptive processes of companies responding to changing governance preferences in the relationship between the extractive industry and society.

2. The extractive hot zone of Conklin, Alberta

The oil sands region of Canada is primarily situated in the north-eastern part of the province of Alberta, until recently relatively sparsely populated by various Aboriginal groups of First Nations or Métis³ origin. As in many extraction zones, the oil sands region encompasses traditional lands of Aboriginal people. Today, in the midst of the Athabasca bitumen area is Conklin, the closest community to where Statoil operates. Conklin is a small community of Métis people in the municipality of Wood Buffalo, Alberta (Fig. 1).

Despite its isolation, Conklin is a community that is at the centre of the oil sands development. Here, the Métis people have practised trapping, hunting, fishing and harvesting for over a hundred years, living off the land. Steam-assisted gravity drainage operations combined with ancillary high-voltage transmission lines and bitumen pipelines have greatly impacted the area. According to the community, the traditional harvesting territory of the Conklin Métis covers about 10,000 km², stretching from Wiau and Grist Lakes in the south to Algar and Gordon Lakes in the north (Fig. 2) (Golder Associates, 2011). The traditional way of life based on hunting, fishing, trapping and gathering is quickly becoming impossible for the Métis of Conklin (Conklin Métis Local #193, 2012).

Today, community members find it increasingly difficult to access traditional lands. Old trails have been destroyed or upgraded into roads for trucking, numerous new seismic cut lines have been created throughout formerly intact lands and long-standing routes have been restricted or blocked by oil developers (Conklin Métis Local #193, 2012:36). Development has caused a rapid decline in the numbers of animals, berries and plants, as well as a decrease in air and water quality (ibid:72). In addition, the

¹ Statoil Canada Ltd. (Statoil) developed and operates the Kai Kos Dehseh (KKD) leases, which contain more than two billion barrels of estimated recoverable resources. Statoil employs more than 800 people, with its headquarters in Calgary, Alberta. Established by the Norwegian government in 1972, Statoil has grown to become one of Europe’s leading oil and gas companies. The company operates 60% of all Norwegian oil and gas production (in (Vaaland and Heide, 2008)), and is Norway’s largest single company with a net operating income of NOK 110 billion in 2014 (in (Statoil, 2014)).

² Some interviewees remain anonymous, according to their wishes and in general consideration of the vulnerability of certain contributors to this study.

³ The Métis are recognized in the Constitution Act of 1982 as one of Canada’s three Aboriginal peoples. The term Métis did not have a precise definition until the latter half of the 19th century, when it clearly described people of mixed French and native ancestry.

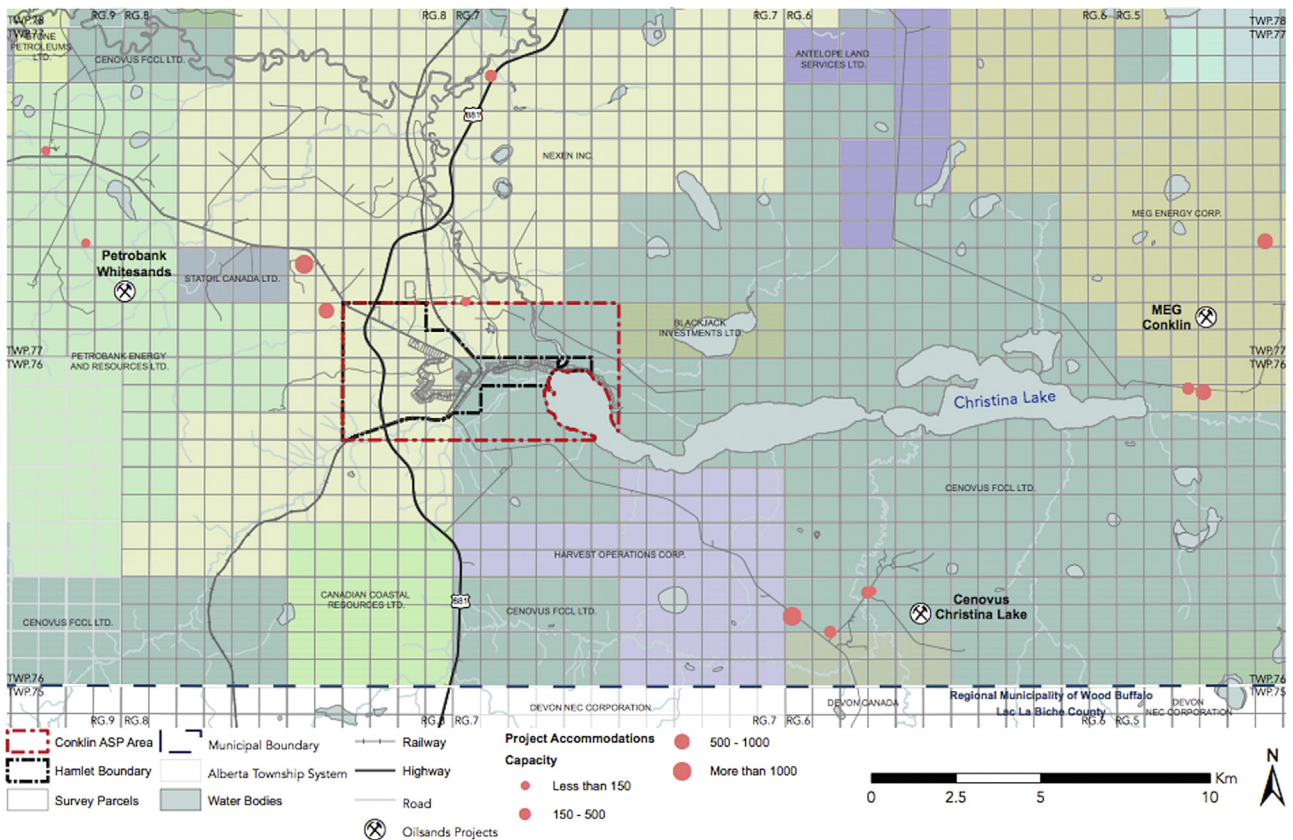


Fig. 1. Conklin Métis community surrounded by industrial developments ("Bylaw No. 13/024, Regional Municipality of Wood Buffalo," 2013).

social and cultural challenges experienced within the small community are devastating, with substance abuse, alcoholism, high crime rates and poor living conditions taking a heavy toll of its inhabitants (interview with head of Conklin Resource Development Advisory Committee, 2015).

The history of the Conklin Métis is a microcosm of the complex history of the Métis (and other Aboriginal peoples) in Canada, which has been characterized throughout modern Canadian history by recurring cycles of settlement, displacement, dispossession and dispersion of Métis people from traditional homelands and movements to new lands (Conklin Métis Local #193, 2012). The province of Alberta and the regional municipality of Wood Buffalo struggle to govern this complex landscape of industrial developments and traditional ways of life.

3. Governance theories and corporate responses

In the governance of complex societies, it appears to be a truism that there are a multitude of concerned parties. Theories of complex systems and networks have recently formed the basis of applied governance approaches to the participation of concerned parties or stakeholders (Dentchev et al., 2015; Dicken et al., 2001; Harvey and Bice, 2014; Jacobsson and Garsten, 2012; Jones, 1998; Reich, 2008; Sunley, 2008). The parties in such forms of governance participate (or are allowed to participate) in these decision-making relational networks because of their "stakes" in the issues that these forms of governance are intended to address (Swyngedouw, 2005; 1995). In the following sections, we revisit three basic notions behind the emergence of what I term *governance as corporate stakeholder management*. To understand these changing features of governance, we must examine three different but interrelated developments in the governance and management

literature, combined with subsequent changes among CSR practitioners.

3.1. From government to governance

The concept of "governance" is used in many subdisciplines of the social sciences. Common elements emphasized are co-operation to enhance legitimacy, the effectiveness of governing societies, new processes and public-private arrangements (Kooiman, 2003). Traditionally, governing is what governments do—they control the allocation of resources between social actors, and provide a set of rules and operate a set of institutions to do so. Thus, governing involves the establishment of a basic set of relationships between governments and their citizens, which differ from highly structured and state-controlled hierarchical arrangements to those egalitarian or "plurilateral" society-driven ones that are monitored only loosely and informally, if at all (Howlett et al., 2009). In its broadest sense, "governance" is a term used to describe the mode of increased government co-ordination exercised by public and private actors in their efforts to solve problems of collective action inherent in government and governing (De Bruijn and Ernst, 1995; Klijn and Koppenjan, 2000; Kooiman, 2000; Rhodes, 1996). The driving force behind this development is said to be the increased recognition of societal complexity, and a growing awareness that governments are not the only crucial actor to address major societal challenges (Kooiman and Van Vliet, 2000).

Governance of the extractive hot zone of Alberta can be said to be a process by which an ever-wider range of actors is drawn into governing processes thought to be characterized not by rules, regulations and the exercise of hierarchical authority, but by informal networks claimed to be egalitarian that focus upon partnerships and networks and the blurring of the boundaries between public and private sectors.

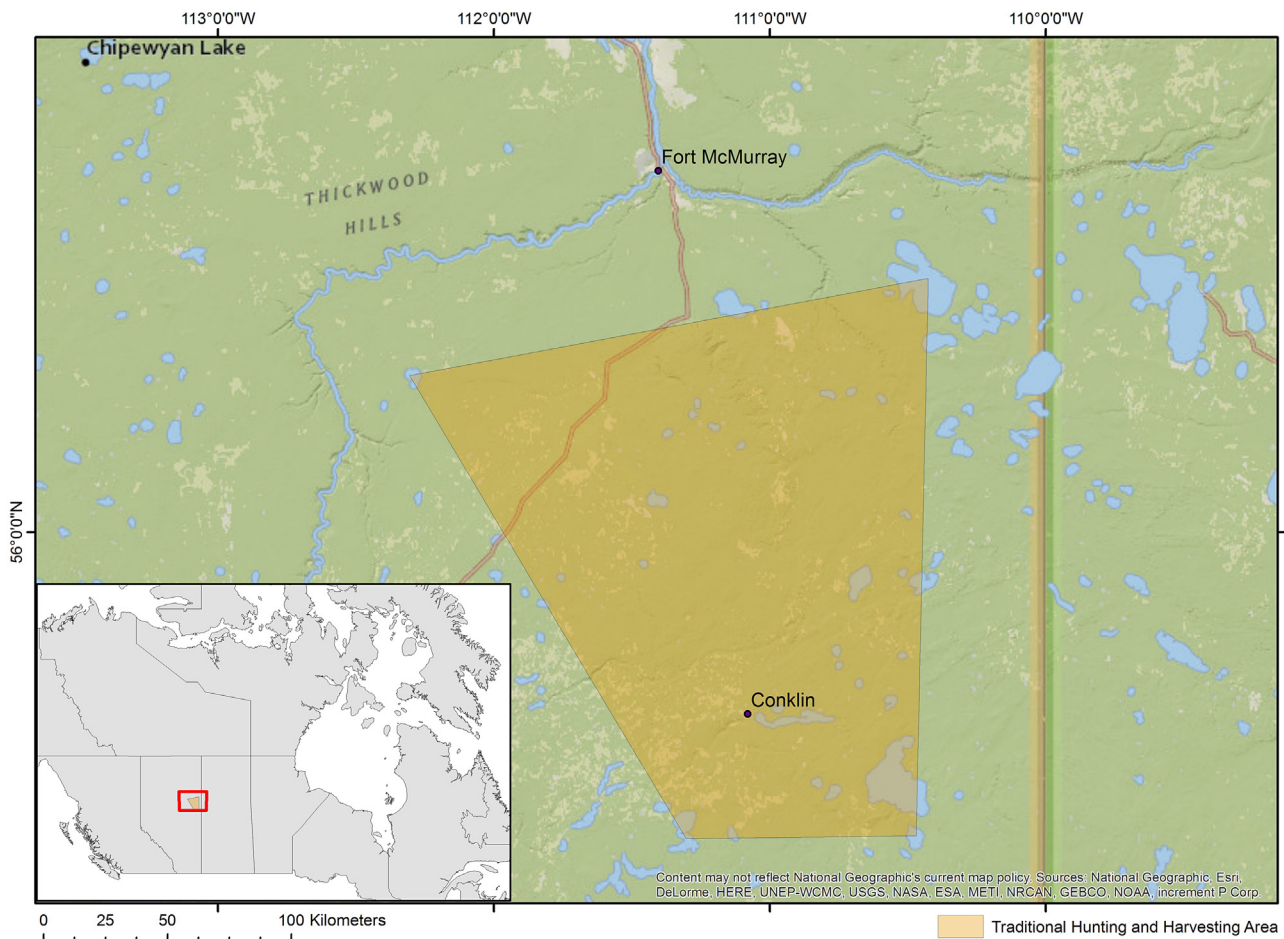


Fig. 2. Conklin Métis Local #193 harvesting area (based on Golder Associates, 2011).

3.2. The post-political condition

Although governance has gained considerable attention and endorsement, an influential group of scholars has strongly criticized its alleged crippling effects on democracy and participation (Mouffe, 2005; Rhodes, 2007; Swyngedouw, 2005, 2010). As Lemke (2007) points out, for all the positive aspects associated with the shift towards governance, there are also questions about its ability to improve democratic processes, not least about how it can potentially marginalize conflicts between groups or underplay contradictions between political objectives and actions—a condition referred to as “post-political” (Swyngedouw, 2010).

The post-political condition is held to be one where contestation and conflict are supplanted by consensus-based politics (Butler et al., 2000). Central to this view is Mouffe’s distinction between the “political” as the space of power, conflict and antagonism within human societies, and “politics”, described as “the set of practices and institutions through which an order is created, organizing human coexistence in the context of conflictuality provided by the political” (Mouffe, 2005:9).

Post-political analysis offers potentially useful insights into the framing of recent changes to governance systems, especially what is understood to be within the remit of governance, and who engages with a system and under what terms (Allmendinger and Haughton, 2012). According to Oosterlynck and Swyngedouw (2010), the new forms of governmentality that have arisen over the past decades have formed with the consensus—despite often conflicting agendas and lifestyles—that managerial–technological apparatuses should permit the negotiation of conflicts in such a

way as to arrive at mutually beneficial policy formulations. This amounts to colonization of the political by managerial–technological governance that has erased the gap between the political and policies, resulting in depoliticization (Oosterlynck and Swyngedouw, 2010).

3.3. Changing CSR frameworks

These changing spaces of governance correspond with developments within the field of CSR. The basic concept of CSR is that corporations are a vital part of society, and that they have both the power and the responsibility to conduct their affairs in ways that satisfy not only shareholders, but also other constituencies such as employees, customers, the environment and the community at large (Eijsbouts, 2011). Since the 1950s, CSR has increasingly become a buzzword in corporate–community relations. CSR has especially taken hold within extractive industries, first as a tool used by NGOs to police multinational mining or energy companies operating in the Global South (Dupuy, 2014; Harvey, 2014; Virah-Sawmy, 2015). Later, business gained control over its own CSR activities, leading to a proliferation of business-led CSR initiatives, concerning both international CSR standards and CSR reporting (Frynas, 2005; Harvey, 2014).

In the CSR literature, the principle of voluntarism is predominant and requires responsible business activities to be value based (Bowen and Johnson, 1953), discretionary and to extend beyond legal requirements (Carroll and Shabana, 2010; Dentchev et al., 2015; Eijsbouts, 2011; Lee, 2008). Among the many critics of voluntarism, Rajak (2011) states that CSR has evolved from a

movement among campaigners to compel companies to “clean up their act” to a discourse of unity and partnership led by corporations themselves. Describing the historical development from activist-oriented naming and shaming of multinational companies to a more industry-led, self-inflicted social consciousness, Rajak claims that the moral economies of responsibility, generosity and community—and the social bonds of affection and coercion that these create—have become not the weapons of the weak, but the weapons of the powerful (ibid.).

A transformative concept within this critical development has been stakeholder management, a term first coined by Freeman in 1984 (2010). Maintaining “a licence to operate” is perceived to be a constant challenge (Harvey, 2014; Jenkins and Yakovleva, 2006; Virah-Sawmy, 2015), and for the extractive industries, CSR is about balancing the diverse demands of a wide array of stakeholders, with the ever-present need to make a profit (Jenkins, 2004). The stakeholder model of CSR was developed mainly by management scholars who were frustrated by the lack of practicality of the previous theoretical models. A stakeholder refers to any individual or group that maintains a stake in an organization in the way that a shareholder possesses shares. Furthermore, a stakeholder here is defined as any group or individual that “can affect or is affected by the achievement of an organization’s objectives” (Freeman, 2010:46). Within the stakeholder framework, the difference between the social and economic goals of a corporation is no longer relevant, because the central issue is the survival and success of the corporation (Harvey, 2014; Lee, 2008; Virah-Sawmy, 2015). Survival of a corporation as such is affected not only by shareholders, but also by various other stakeholders such as employees, governments and customers (Donaldson and Preston, 1995). Jones (1995) correctly predicted that the stakeholder model had great potential to become the central paradigm in the field of CSR.

In summary, I argue that the foundation upon which the governance innovations in the extractive hot zone in Alberta have been constructed is based on three distinct but interwoven developments: (1) the theoretical and empirical evolution of governance as a multi-stakeholder approach that is more than government; (2) the subsequent critical identification of what has been termed a pragmatic, consensus-seeking, post-political condition; and (3) the parallel emergence of CSR as stakeholder management. By adopting these theoretical lenses of analysis in the following case study, I provide a framework to explain how governance innovation is taking place in the extractive hot zone.

4. Governing the extractive hot zone

Historically, the governance structure of Canada’s extractive hot zones has been dominated by two groups of stakeholders, that is, governments at all levels and industry (Rummens, 2009). Over the past two decades, tensions have increased between local Aboriginal communities and the Crown because of the proliferation of industrial activities. The authorities have explored a number of avenues to facilitate a smooth transition for peripheral, heavy-impacted, rural communities, but without much success. In the early 1990s, several of the smaller hamlets in the extractive hot zone of Northern Alberta merged with the urban growth centre of Fort McMurray to establish the regional municipality of Wood Buffalo. The distribution of the increased tax revenues resulting from the merger has been controversial, and several of my informants reported a formula that was skewed between urban and rural areas: “The smaller hamlets bearing the heaviest burdens [industrial impact] suffer from strong competition for limited public funds and attention” (interview with consultant, 2015). With three rural representatives on the council, compared to seven from urban areas, it is evident that the opportunities are slim for

remote areas; they are left to their own devices, to fend for themselves: “There is a great difference between the communities with representation and those of us who have none. Without representation you get nothing” (interview with Fort McKay Métis community leader, 2015).

In and around Conklin, where Statoil has its activities, the level of criticism is rising, pointing to the absence of municipal support and presence:

“The regional municipality does not do anything. We have to fight for every single project; last time it was the multiplex (community activity centre). We need a multiplex to get our kids off the drugs and quit drifting around looking for trouble, but we have had to fight the municipality at every juncture. Not even the newly installed water facility is for the community. They sell the water to industry” (interview with head of Conklin Resource Development Advisory Committee, 2015).

This critical situation represents a rich opportunity for alternative actors to fill the void, and for alternative governance innovations to emerge.

4.1. Governance innovations to solve tensions

To create a more stable relationship between the component parts of the extractive hot zone, the government has developed flexible governance innovations, with three recognizable features, namely consultation, EIAs and IBAs. In the following sections, I elaborate on the genealogy of these different governance instruments, and how they can be said to constitute governance innovation reformulated as corporate stakeholder management. Each feature has its own academic and juridical literature, but the scope of this paper does not allow me to engage with all of them. Hence, I offer only a brief, schematic outline of their characteristics, before elaborating on their empirical manifestations.

4.2. The duty to consult

Alberta extractive hot zones geographically overlap Aboriginal traditional lands and treaty areas. The duty to consult is triggered by an apparent violation of an existing Aboriginal or treaty right recognized and affirmed by the Constitution Act (1982), or in cases where Aboriginal communities assert rights that have yet to be formally recognized by a court of law or treaty (Jacobsson and Garsten, 2012). This common law duty stems from the Crown’s fiduciary obligation towards Aboriginal peoples and Section 35 of the Constitution Act (1982), which are interrelated (Delgamuukw, 1997; Eyford, 2015; Gogal et al., 2005; Lawrence and Macklem, 2000). A number of court cases have debated and elaborated the infringements of Aboriginal rights in relation to natural resource extraction, each contributing to the increasingly complex and multifaceted regulatory environment of the Canadian extractive hot zone (Gogal et al., 2005).

In most cases, this duty to consult is delegated to industry proponents. Crown policy often requires a private company to consult with adversely affected First Nations or other Aboriginal communities (Delgamuukw, 1997; Haida, 2004; Sparrow, 1990; Tsilhqot’in, 2014). This delegation is pragmatically justified because the proponent has better insight into project details, and is also best positioned to compensate for infringements (Alberta Government, 2014; Fidler, 2010; Gogal et al., 2005; Lawrence and Macklem, 2000). This practice of delegation is confirmed and backed by the Supreme Court of Canada (Gogal et al., 2005), and is also supported by local stakeholders: “Most communities would rather negotiate with companies than with the government or municipality” (interview with consultant, 2015). Although this is partly because of the historically bad

relationship between indigenous communities and the Crown, it is also because the municipality has no resources to spare.

However, the duty to consult does not apply to Conklin and many other Métis hamlets because of the undecided consultative status of Métis communities in Alberta.⁴ Alberta recognizes a duty to consult with some Métis communities when Crown land management and resource development decisions may adversely impact their traditional uses. “Currently, the province does not have a Métis consultation policy but has put in place an internal process to guide consultation with Métis communities on a case-by-case basis where there is a credible assertion of Métis Aboriginal rights” (email correspondence with community associated lawyer, 2014).

In the case of Conklin, the fact that consultation is delegated to industry is important: “Our stakeholder focus is on communities within 30 km of the facility” (Statoil Canada, 2007). Industry is less concerned about formalities regarding Aboriginal status, and more worried about pragmatics: who are the stakeholders that can influence, or be influenced by, our performance? “We firmly believe that community consultation is a starting point for building the long-term sustainable relationships we need for successful oil sands development” (Statoil Canada, 2013).

4.3. EIAs

The second governance feature in the Alberta extractive hot zone is EIAs. In practice, an EIA has a much broader scope than the duty to consult, but it contains some similar characteristics related to governance. As a key component of environmental management over the past 40 years, EIAs have coincided with the increasing recognition of the nature, scale and implications of environmental change brought about by human actions (Haida, 2004). As for the duty to consult, EIAs are delegated to companies (Morgan, 2012), but are carried out in close collaboration with government agencies.

Environmental disruptions are evident in the extractive hot zones, and local stakeholders report the material consequences of the industrial operations within the zone (Chipewyan Prairie Dené First Nation, 2007; Conklin Métis Local #193, 2012).⁵ The material consequences are significant for Aboriginal communities, which are surrounded by logging, exploration, development and production activities by both forestry and hydrocarbon industries: “It’s no use, it will never get better or get back to the way it was before. The fish in the river are gone, the game has been driven out of these areas, and the few catches we get are sometimes rotten inside” (interview with elder, Fort McKay Métis Community, 2015).

These changes have affected subsistence practices and greatly impacted the freedom of Aboriginal community members to move about the land for traditional land use purposes. The community is no longer free to hunt, trap, fish or gather berries and plants as it was previously (Chipewyan Prairie Dené First Nation, 2007; Conklin Métis Local #193, 2012; Connacher Inc., 2010). The lawyer working closely with the Conklin community confirmed this:

“Although there is no doubt that fewer Conklin residents sustain themselves by hunting and trapping than did so even as recently as 40 years ago, these traditional pursuits have not been reduced to the level of hobbies. Most residents still take part in hunting and fishing for food as well as gathering plants,

herbs and berries for both food and medicinal purposes. It is actually the gathering activities that are most sensitive to the environmental effects of development” (email correspondence with community associated lawyer, 2014;).

This mixed indigenous economy is in line with similar findings by other scholars: “For Aboriginal communities, the mixed economy is dynamic and intrinsically bound to the environment, making the long-term impacts of industrial development especially critical” (LeClerc and Keeling, 2015:17).

The Statoil EIA for its Conklin project states:

“To ensure openness and transparency in the community, the company has undertaken a regional EIA that fully discloses the commercial development in the approximately 12 townships⁶ of bitumen leases held by the company. This application and EIA discloses the development over the life of the project. The regional EIA regulatory approach was developed through consultation with provincial regulatory agencies” (Statoil Canada, 2007).

A common theme in most scholarly discussions of EIAs is a critique of the rationalist model of governance, pointing to the need to explore and develop models that embrace new thinking about planning and decision-making processes in their wider social, cultural, political and economic contexts (Alberta Government, 2013). This has encouraged the promotion of deliberative and collaborative approaches to planning and decision-making processes, including EIAs themselves, such as bringing stakeholders and communities into the processes, emphasizing the importance of communication as a means of negotiating consensus solutions that capture the values of those participants, and moving the professional technocrats from a controlling role to a facilitating role in the decision-making process (Bartlett and Kurian, 1999; Richardson, 2005; Wilkins, 2003). This view is confirmed by the Statoil EIA: “Several of the EIA programs, such as the wildlife monitoring for caribou, moose and wolf, were tailored to actively engage the local stakeholders and address their specific issues” (Statoil Canada, 2007). EIAs are commonly criticized for being biased in favour of proponents, and lacking peer-reviewed data analysis (Aguilar-Støen and Hirsch, 2015; Davidson and MacKendrick, 2004; Fidler, 2010; O’Faircheallaigh, 2007; Wilkins, 2003). Although Statoil’s caribou monitoring project has been one of a rare collection of peer-reviewed EIA programs, it has also been the subject of substantial criticism for being too limited and unscientific (Boutin et al., 2012).

However, an EIA in itself is not constructed to mitigate or mediate environmental or social disturbances of planned industrial operations. For that purpose there has been a proliferation of EIA follow-up initiatives, such as environmental agreements and other negotiated agreements, that are intended to reduce the widespread difficulty of ensuring effective follow-up of EIAs regarding both anticipated environmental impacts and their actual appearance (Elling, 2009; Wilkins, 2003), as well as to ensure monitoring to prepare for the unexpected. I now focus on the most common tool in relation to social impacts in the extractive hot zones, that is, IBAs.

4.4. IBAs

IBAs are privately negotiated agreements, typically between extractive industries and local communities, whereby government is relegated to an external observational role. IBAs are commonly viewed as agreements that establish formal relationships between signatories, mitigate negative development impacts and enhance

⁴ Although, in its June 2007 Métis Harvesting Policy, Alberta conceded that Conklin is a rights-bearing community with harvesting rights (lawyer, legal analysis, Appendix to traditional land use studies, Conklin Métis Local #193).

⁵ These sources are traditional land use studies kindly provided by Chipewyan Prairie Dené First Nation and Conklin Métis Local #193. The sources contain data collected from elders in the two communities, based on interviews, field trips and storytelling.

⁶ A standard geographical unit.

positive development outcomes for Aboriginal communities (O’Faircheallaigh, 2007). The agreements primarily focus on employment and economic benefits, while more recent IBA constructions acknowledge the need for greater flexibility and diversity of community involvement in industrial decisions and the need for social and cultural programs, dispute resolution mechanisms, revenue-sharing provisions and environmental restrictions (Caine and Krogman, 2010; Diges, 2008; Dreyer and Myers, 2005; Gibson, 2008; Sosa and Keenan, 2001).

IBAs are signed between extractive industries and Aboriginal communities in Canada in general, and more specifically in Alberta, to establish formal relationships between them, to reduce the predicted impact of an industrial operation and to secure economic benefits for affected communities (Galbraith et al., 2007; Gibson, 2008; Sosa and Keenan, 2001). IBAs do not fall under the purview of the state and thus fall within a historically uncontested, grey area of legality, often referred to by lawyers as quasi-legal⁷ (Sosa and Keenan, 2001).

To industry, these IBAs represent an opportunity to overcome a complicated situation resulting from the difficult relationship between the state and its Aboriginal people:

“Government and the regulatory government for our industry; it’s horrible, and it’s got a lot of history to it. You have to appreciate that we [industry] are in the middle of this relationship, a nation-to-nation relationship. When they [Aboriginal people] are not being recognized, all of that comes into the mix when industry tries to operate. And we have our own interests in doing things right” (interview with CSR manager, Statoil Canada 2015).

This attitude resonates well with other parts of the industry, which claim that there may well be some very good business reasons for the extractive companies operating in frontier regions to want to pay attention and contribute to social development in their back yard. Companies should tune their operating models to help alleviate poverty, generate self-sustaining economic conditions that will drive the company’s costs down over time, and avoid community unrest and criminal behaviour (Harvey, 2014:8).

Conklin has negotiated a number of long-term agreements with industry: “These agreements have provided communities with direct funding support for physical, social, and human infrastructure, as well as contracting opportunities for company businesses and a process to address environmental issues involving future developments” (email correspondence with community lawyer, 2014). Clearly, IBAs avert the issue with regard to the consultative status of the Métis, making IBAs arguably the most useful of the three governance features for the Métis communities of Conklin and elsewhere. Since 2009, Conklin has taken an aggressive approach to asserting its Aboriginal rights. Thus, the agreements signed by the community are comparable in their terms to those signed by local First Nations people. The agreements do not deal with compensation for the infringement of Aboriginal rights, because that is a matter for which the Crown is completely responsible: “Rather, the money and business opportunities received from industry are intended to help the community cope with and respond to the massive change that oil sands activity is imposing on it” (email correspondence with community associated lawyer, 2014).

This approach is echoed in the statements from the company: “We use a lot of resources in social investment, and I feel we have a good understanding of the situation that way. We operate in their back yard, so to speak, and want to be a good neighbour. We try to interact, and compensate those who are affected by our operations in an adequate manner. There were a

lot of social problems in Conklin, and many were thrilled when we arrived” (interview with CSR manager, Statoil Canada, 2014).

On signing an IBA, an Aboriginal group accepts restrictions to the exercise of their traditional rights and Aboriginal title. They provide industry with access to their lands, and give their support to the resource development project. In return, they accept a “package of measures” that include economic benefits and the minimization of negative impacts on the environment and people. Additionally, most IBAs contain provisions to ensure consent and co-operation from the Aboriginal community, and confidentiality and non-compliance clauses (Caine and Krogman, 2010; Diges, 2008; Gogal et al., 2005; Keeping, 1999). Prno (2007) argues that Aboriginal peoples find these agreements appealing because they lend legitimacy to Aboriginal claims to land and rights (Caine and Krogman, 2010). Most communities recognize that the regulatory process is biased in favour of development, and communities seek economic and contracting benefits because “the choices they are faced with are either having development proceed and receiving some benefit from it, or having development proceed and receiving no benefit at all from it” (email correspondence with community associated lawyer, 2014).

Because of the grey area of legality concerning IBAs, there is some ambiguity regarding the claimed confidentiality surrounding these agreements. Some claim that “these agreements are generally kept confidential at the request of industry, since companies view them as business contracts, which under our legislation are entitled to confidentiality” (email correspondence with community associated lawyer, 2014), while industry claims that “Statoil will continue to honour our agreements with communities, and out of respect, that would include their confidentiality” (email correspondence with CSR manager, Statoil Canada, 2015). According to the Government of Alberta’s Aboriginal Consultation Office (ACO), social agreements (IBAs) have nothing to do with their duty to consult. They are confidential in nature and there is nothing that compels companies or communities to divulge this information (email correspondence with head of ACO, 2015). However, Statoil noted: “Our agreements cover areas such as social investment, consultation, economic and workforce development. Our commitments are fairly generic and describe how we wish to work with our communities” (email correspondence with CSR manager, Statoil Canada, 2015). “We really want to link it to business risk. It is much more than being perceived as a good citizen of the world, there is a business rationale behind it” (interview with CSR advisor, Statoil Norway, 2015). “If we have healthier local communities benefiting from our programs, they are more loyal” (interview with CSR manager, Statoil Canada, 2015). These findings resonate well with similar claims from industry: “Such outreach programs can work wonders for a while with people who have known little previously in the way of modern comforts” (Harvey, 2014:9) and public services.

In summary, the rationale for Aboriginal groups to enter into these agreements includes overcoming marginalization, strengthening regional economic and political sovereignty and increasing control of resources to ensure regional benefit flows returning to communities affected by development. Resource development proponents have an incentive to enter into IBAs with Aboriginal groups to obtain consent from stakeholders to access the land for resource development, obtain labour locally and create a co-operative working relationship (Caine and Krogman, 2010).

5. Conclusion: the emergence of governance as corporate stakeholder management

The extractive industry activities have had a great impact on the social, cultural and environmental realities in the extractive hot

⁷ Although they may become legally binding if the parties involved agree to this.

zone of Alberta in general and in Conklin in particular. Environmentally, as well as socially and culturally, the burden shouldered by local ecosystems and Aboriginal communities is substantial, and has added to a prolonged, historical conflict between the Crown and its Aboriginal citizens over rights and entitlements. This complex relationship has led to substantial challenges for all stakeholders in the extractive hot zone.

In response to these challenges, the federal duty to consult, along with provincial EIAs and locally negotiated IBAs, have all been delegated to industry, representing component parts on different levels of a nested governance structure, where corporate responses in the form of CSR and stakeholder management are positioned as an important centre-piece. This delegation has been legitimized on pragmatic grounds, underscoring industry's better positioning to consult the stakeholders, assess its own impact and negotiate compensation and benefit agreements. I have identified an interrelated, nested and multiscale governance structure emerging from these four distinct governance features (Consultations, EIAs, IBAs, CSR) that can be viewed as a joint mobilizing effort by government, extractive industry proponents and Aboriginal communities to realize a workable, win-win regulatory environment in the extractive hot zone (Fig. 3).

These are all recognizable features in the governance regime of the extractive hot zone, where the emphasis is on a smooth transition from a highly political space—understood as Mouffe's space of power, conflict and antagonism—to governance, or rather processes, instruments and narratives such as “multi-stakeholderism”, “community” and “partnership” (For elaborations on this issue, see Eyford, 2015; Goyal et al., 2005; Kennett, 1999). This structure is designed to govern the extractive hot zone, where agreements are claimed to be in the mutual interest, where communities and corporations are rhetorically inseparable and where the survival of a company and the industry become the common objective for all stakeholders: “Without the oil sands, the community loses everything!” (Fort McKay Métis, 12.10.2015, social media update). Hence, notions of this governance practice as a positive-sum game are reinforced; the confidential nature of the

IBAs ensures that this claimed mutual interest is upheld, turning local communities into silent, complacent stakeholders.

Consequently, the Alberta government has put private interests in the driver's seat in the governance of the extractive hot zone by encouraging companies to comply with international CSR standards, and by facilitating “beyond compliance activities” through the combination of delegating consultation with Aboriginal communities to the companies, ensuring environmental impact (self)-assessments conducted by the companies, and letting the corporations negotiate IBAs bilaterally with the concerned communities. This incremental change in corporate practices can be viewed as a response to changing governing preferences, where negotiations, consensus and positive-sum games akin to a post-political condition are preferred to political competition over resources. This is based on a corresponding increased maturity in CSR implementation among primarily multinational companies. Here, traditional philanthropic, standardized and image-based CSR has been replaced by allegedly collaborative, performance-driven and integrated practice. However, empirical evidence from this case study shows that risk management remains the central driver of CSR and stakeholder management. Future research must determine whether industry has the resources and competencies to carry this acquired responsibility for local development actively and over time, and what happens when investments dry up and industry leaves.

Furthermore, although there may be sound arguments for this emerging, pragmatic governance structure centred around CSR (and I humbly believe this article represents one such argument), there are serious pitfalls related to the lack of transparency and potentially inadequate participation of certain vital stakeholders in the process. These pitfalls are partly reflected in the remaining strong oppositional voices raised in the extractive hot zone, particularly among indigenous communities and interest groups (Black et al., 2014; Dow, 2012; Foster, 2008; Le Billon and Carter, 2012; Nikiforuk, 2010). More importantly, this governance cum CSR corresponds with the general trend of a post-political condition within the extractive hot zone of Alberta. We can predict some potential shortcomings in the governance structure, particularly from its consent-producing IBAs. With lucrative, confidential business agreements waiting at the end of a resource-demanding and tiring governance process, the possibility of bias in favour of industry development is high among the Aboriginal communities in both consultations and EIAs.

The role of government as regulator in this governance triangle is severely challenged by these bilaterally negotiated, confidential IBAs between industry and community. A first step towards a more transparent process should be to establish tripartite forums for these negotiations, where the local communities, the municipality responsible for local service delivery and the company sit down to agree on social investment needs and joint social programming.

However, the vital importance of stakeholder leverage in such negotiations also results in increased focus on documenting traditional land use among local Aboriginal communities. This documentation is considered in conjunction with claims of cumulative environmental impact by existing and planned industrial developments: “Monitoring of prospect licensing by the government and mapping of historic and present traditional land use practices are important parts of our activities today” (interview with consultant, 2015). Together with competence building related to negotiations, these activities are all part of the new reality of Aboriginal communities. Hence, the communities themselves are calibrating their participatory role in the emerging governance processes in the extractive hot zone to strengthen their negotiating power. In this way, they underscore

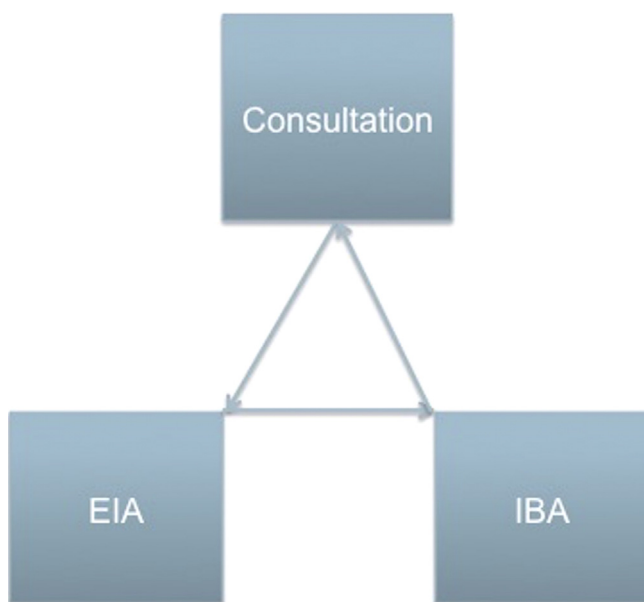


Fig. 3. Governance transformed into CSR (author's own graphic).

the basic insight that there is no such thing as a post-political society.

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